

THE EFFECTIVE DATE OF THIS ORDINANCE IS NOVEMBER 16, 2007

ORDINANCE NO. 07-33-473

Re: DEVELOPMENT RIGHTS AND RESPONSIBILITIES

RECITALS

State law, Maryland Annotated Code, Article 66B, Section 13.01 and following, authorizes the Board of County Commissioners to establish procedures and requirements for the consideration and execution of Development Rights and Responsibilities Agreements.

The Board of County Commissioners desires to implement this authority.

To ensure full public information and open government, negotiations between a County elected official and the applicant or the applicant's agents shall be in open session.

To avoid any inconsistency between State and County law, this Ordinance closely mirrors the State law.

The Board of County Commissioners held a duly advertised public hearing on this Ordinance on October 16, 2007. The public had an opportunity to comment on the proposed Ordinance at this public hearing.

The Frederick County Planning Commission reviewed this proposed Ordinance at its September 19, 2007 public meeting. The Planning Commission recommended that the County Commissioners move forward with this Ordinance.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE
BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY,
MARYLAND, that the following chapter be added to the Frederick County Code:

Chapter 1-25 Development Rights and Responsibilities Agreements

Section 1-25-1 DEFINITIONS.

The words or phrases used in this chapter shall have the meaning prescribed
in the current County Code except as otherwise indicated herein:

1. Agreement – a development rights and responsibilities agreement.
2. Applicant – any individual, firm, corporation, partnership, association, society, syndication, trust, or other legal entity that files a petition to enter into an agreement.
3. Comprehensive Plan – The current Frederick County Comprehensive Plan as adopted by the Board of County Commissioners under the provisions of Article 66B of the Annotated Code of Maryland.
4. County Commissioners – Board of County Commissioners of Frederick County, Maryland.
5. Development – any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, dumping, extraction, dredging, grading, paving, storage of materials or equipment, land excavation, land clearing, land improvement, landfill operation, or any combination thereof; and any change in the use of a building for which a building permit/zoning certificate is required by law.
6. Planning Commission – the Frederick County Planning Commission.
7. Property – the parcel or parcels of real property to be developed which are the subject of an agreement.
8. Public Principal – the governmental entity of the County that has been granted the authority to enter into agreements under this chapter.

Section 1-25-2 AUTHORITY/PUBLIC PRINCIPAL.

The County Commissioners may exercise the authority granted by Section 13.01 of Article 66B of the Annotated Code of Maryland to enter into development rights and responsibility agreements and shall act as the public principal.

Section 1-25-3 PETITION.

A. Any applicant having a legal or equitable interest in real property in Frederick County may petition the County Commissioners to enter into an agreement.

B. The petition shall be filed with the Division of Permitting and Development Review and must include the processing fee in accordance with a fee schedule adopted by Resolution of the County Commissioners.

C. The petition shall include a copy of the proposed agreement.

D. All persons with a lien interest in the property must authorize the Petition.

E. The County Commissioners shall first review the petition and determine whether to accept the petition and initiate this process.

F. If the County Commissioners accept the petition, a filing fee for each petition shall be paid in accordance with a fee schedule adopted by Resolution of the County Commissioners.

**Section 1-25-4 CONTENTS OF DEVELOPMENT RIGHTS AND
RESPONSIBILITIES AGREEMENT.**

A. At a minimum, a development rights and responsibilities agreement shall contain the following:

1. a lawyer's certification that applicant has either a legal or equitable interest in the property;
2. the names of all persons having an equitable or legal interest in the property, including lien holders;
3. a legal description of the property subject to the agreement;
4. the duration of the agreement;
5. the permissible uses of the property;
6. the density or intensity of use of the property;
7. the maximum height and size of structures to be located on the property;
8. a description of permits required or already approved for the development of the property;
9. a statement that the proposed development plan is consistent with the Comprehensive Plan and all applicable County regulations;
10. a description of the conditions, terms, restrictions or other requirements determined by the County Commissioners to be necessary to ensure the public health, safety or welfare; and
11. to the extent applicable, provisions for the:
 - a. dedication of a portion of the property for public use;
 - b. protection of sensitive areas;
 - c. preservation and restoration of historic structures;
 - d. construction or financing of public facilities; and

- e. responsibility for attorney's fees, costs, and expenses incurred by the County Commissioners in the event an agreement is abandoned or breached by the applicant.

B. An agreement may contain other terms, provisions, requirements and agreements concerning the property which may be agreed upon by the County Commissioners and the applicant.

C. An agreement may fix the time frame and terms for development and construction on the property.

D. An agreement may provide for other matters consistent with this chapter.

E. All persons with a lien interest in the property must execute the agreement.

F. Any superior interest with a power of sale must be subordinated to the position of the County Commissioners or acceptable financial guarantees must be provided.

Section 1-25-5 REFERRAL TO PLANNING COMMISSION.

If the County Commissioners accept the petition as provided in subsection 1-25-3(F), DPDR shall refer the petition to the Planning Commission for determination of whether the proposed agreement is consistent with the Comprehensive Plan. The County Commissioners may not enter an agreement unless the Planning Commission determines whether the proposed agreement is consistent with the Comprehensive Plan.

Section 1-25-6 PUBLIC HEARING.

Before entering an agreement, the County Commissioners shall conduct a public hearing on the agreement. Notice of the hearing shall be published in a newspaper of general circulation in the County once each week for two (2) consecutive weeks, with the first such publication of notice appearing at least fourteen (14) days prior to the hearing.

Section 1-25-7 AMENDMENT OF AGREEMENT.

A. Subject to paragraph B. of this section and after a public hearing, the parties to an agreement may amend the agreement by mutual consent.

B. Unless the Planning Commission determines that the proposed amendment is consistent with the Comprehensive Plan:

1. the parties may not amend or terminate an agreement; and
2. the County Commissioners may not suspend or terminate an agreement as provided in subsection 1-25-8B.

Section 1-25-8 TERMINATION OF AGREEMENT; SUSPENSION.

A. The parties to an agreement may terminate the agreement by mutual consent after the County Commissioners hold a public hearing.

B. If the County Commissioners determine that suspension or termination is essential to ensure the public health, safety, or welfare the County Commissioners may suspend or terminate an agreement after a public hearing.

Section 1-25-9 APPLICABLE LAWS, REGULATIONS AND POLICIES.

A. Except as provided in paragraph B of this section, the laws, rules, regulations, and policies governing the use, density, or intensity of the property

subject to the agreement shall be the laws, rules, regulations and policies in force at the time the County Commissioners and the applicant execute the agreement.

B. An agreement may not prevent compliance with the laws, rules, regulations, and policies enacted after the date of the agreement, if the County Commissioners determine that compliance with laws, rules, regulations and policies is essential to ensure the health, safety, or welfare of residents of all or part of Frederick County.

Section 1-25-10 RECORDING.

A. An agreement not recorded in the Land Records of Frederick County within twenty (20) days after the day on which the County Commissioners and the applicant execute the agreement is void. Either the applicant or the County Commissioners may record the agreement.

B. The County Commissioners and the applicant, and their successors in interest, are bound to the agreement after the agreement is recorded.

Section 1-25-11 ENFORCEMENT BY INTERESTED PARTIES.

Unless the agreement is terminated under Section 1-25-8 of this chapter, the County Commissioners and the applicant, or their successors in interest, may enforce the agreement.

Section 1-25-12 TIME LIMITS.

An agreement shall be void five (5) years after the day on which the parties execute the agreement unless the agreement specifies a shorter or longer duration or unless extended by an amendment under Section 1-25-7 above.

Section 1-25-13 OPEN SESSIONS.

Any negotiations between a County elected official and the applicant or the applicant's agents concerning an agreement shall be conducted in open session.

Section 1-25-14 APPEALS.

A. Any person aggrieved by an agreement may file an appeal to the Board of Appeals by filing with the County Commissioners and the Board of Appeals a notice of appeal specifying the grounds of the appeal.

B. An appeal must be taken within 30 days of the day on which the parties execute the agreement.

C. The appeal shall proceed as provided in the Zoning Ordinance (Chapter 1-19) for an appeal from the decision of an administrative officer unless inconsistent with the provisions of this chapter.

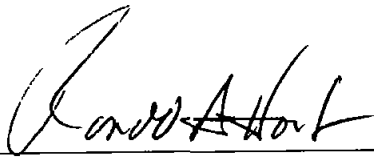
D. If the effect of the decision of the Board of Appeals revises the agreement in any way, any party to the agreement may terminate the agreement within 30 days of the date on which the Board of Appeals decision becomes final.

AND BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall take effect on November 16, 2007.

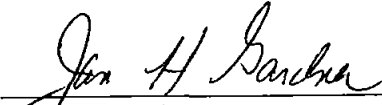
The undersigned hereby certifies that this Ordinance was approved and adopted on the 15th day of November, 2007.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND



Ronald A. Hart
County Manager



Jan H. Gardner
President 